IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

D.B. CIVIL WRIT PETITION NO.881/2000

1. Assistant Director, Land and Building Tax Department, Government of Rajasthan, Civil Line, Durga Bhawan, Gokheley Marg, Ajmer, Rajasthan
2. State of Rajasthan

.....Petitioners

Versus

1. Shri Satya Narayan Bindel, Son of Shri Indra Chand Bindel
2. Shri Prem Kishore Bindel, Son of Shri Indra Chand Bindel
   (1-2 are residents of Plot No. E-5, Shastri Nagar, Ajmer, Rajasthan)
3. The Additional Divisional Commissioner, Ajmer Division, Ajmer

.....Respondents

Date of Order :: 7th September, 2007

PRESENT

HON'BLE MR. JUSTICE R.M.LODHA
HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Mr. Banwari Lal Avasthi, Additional Government Advocate for the petitioners
Mr. R.B. Mathur for the respondents

ORAL ORDER (PER R.M. LODHA,J.):

The subject land and building is situate at E-5, Shastri Nagar, Ajmer.

2. The question that arises for our consideration is whether subject land and building is liable to tax under the Rajasthan Land and Building Tax Act, 1964 (for short, `the Act of 1964') as a single unit or two units.

3. The Rajasthan Taxation Tribunal held that the said land and building have to be taxed as two separate units since two units are independent and owned by different persons. This is how the Rajasthan Taxation Tribunal considered the matter:

> "The dispute regarding the method to be adopted for computing the market value of the first floor is not before the Tribunal. The only point raised in the instant application is whether land & building in question is liable to tax under the LBT Act as a single unit or as two units. It is a matter of record as the floor plan of the building in question has been brought on record that the building comprises a ground floor flat with basement and a first floor flat. The plans clearly indicate that there are two distinct independent residential flats. The order of the AA itself speaks of the first floor having been tenanted as claimed by the assessees. As there are two flats the land & building in question is liable to be taxed, if at all, as two units for each of which the market value has to be separately assessed. The tax under the LBT Act is a tax on land

> & buildings and not on the owner. As such it is not material whether one or more persons own the land & building in question. Even if a single owner were to own two units it is settled law that they cannot be clubbed together."

4. The aforesaid order of the Rajathan Taxation Tribunal passed on 22nd October, 1998 is impugned by the State Government through the functionaries of the Land and Building Tax Department principally on the ground that the tax under the Act of 1964 is on the land and building and it is not concerned with the division of interest in the building or land. In other words, the contention of the petitioners is that the land and building tax is not concerned whether one person own or occupy the land or building or two or more persons own or occupy it.

5. The counsel for the respondents invited our attention to the judgment of this Court (July 12th & 16th, 2007) by the Division Bench presided over by one of us (R.M. Lodha,J.) in D.B. Civil Writ Petition No. 3810/2002-Assistant Director Land & Building Tax Department Versus M/s. Bharat Petroleum Corporation Limited.

6. That was a case relating to tax of a multi-storied building having group of flats

under the Act of 1964. The Division Bench in paragraphs 19 and 20 of the judgment held thus:

> "19. Seen thus, it is difficult to uphold the contention of State that group of flats in a multi-storied building owned by one person constitute one 'building' within the meaning of Section 2 (3). For all legal and ordinary purposes, each separate flat in a multi-storied building would constitute a separate house or for that matter a separate building under Section 2(3) since each of such flat is separate and there is no nexus with the flat above or below or side by side. There is no common functionality as such.
>
> 20. The pre-requisite of the tax under Entry 49 List-II of Seventh Schedule, inter-alia, is that it must be a tax on unit. The tax cannot be taxed on totality i.e. it is not a composite tax and value of all lands and buildings. It is for this reason as well that each flat in a multi-storied building being a house by itself has to be treated as a separate unit and in that sense a separate 'building' under Section 2(3) of the LBT Act and has to be taxed as such."

7. Section 2 (3) and (5) of the Act of 1964 defines the `Building' and `Land' thus:

> "(3) '*Building*'- includes a house, out house, stable, shed, and other enclosures or structures or part thereof whether of masonry, bricks, wood, mud, metal or any other material whatsoever, for whatever purpose used but does not include-

(a) a tenant or other such portable structure.

(b) a dwelling house erected on a holding as defined in the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) by the tenant for his own occupation or a cattleshed or a store house or any other construction for agricultural purposes erected or set up by him on his holding, provided the area covered thereby does not exceed the limit prescribed for purposes of the proviso to sub-section (1) of section 66 or the second proviso to section 67 of the said Act."

"(5) *'Land'* means land which is, or is capable of being used as a building site, and includes garden or ground appurtenant to a building but does not include a holding as defined in the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) provided the improvement referred to in sub-clause (a) of clause (19) of section 5 of the said Act over such holding does not exceed such area as has been prescribed for purposes of the second proviso to sub-sec.(1) of section 66 or the second Proviso to section 67 of the said Act."

8. In the judgment afore-referred, the Division Bench held that the definition of word `Building' under Section 2 (3) was inclusive and not exhaustive and it included inter-alia house or part thereof. The Division Bench referred to the statement of Earl of Halsbury L.C. stated in the case of Grant Versus Langston, more than hundred years ago,

that the word “house” has acquired an artificial meaning. The word is no longer the expression of a simple idea; but to ascertain its meaning one must understand the subject matter with respect to which it is used in order to arrive at the sense in which it is employed in a statute. House is a place of dwelling or habitation. The building may have more than two units for the purposes of Act of 1964. In the judgment of Bharat Petroleum Corporation (supra), the Bench noticed the Circular dated 24th April, 1974 issued by the Government of Rajasthan, Land and Building Tax Department concerning the meaning of unit. The said Notification dated 24th April, 1974 reads thus:

“GOVERNMENT OF RAJASTHAN

LANDS & BUILDINGS TAX DEPARTMENT

No.F2A-3(ii) DLBT/74/515 Dated 24th April, 1974

All Assistant Directors,
Lands & Buildings Tax.

C I R C U L A R

Sub:- Meaning of 'Unit'.

A question arose whether different portions of a building by different persons from different 'Units' for purpose of land & building tax.

The matter was examined in consultation with law Department it has been advised that the

definition of 'building' as given in Sec.3 of Rajasthan Lands & Buildings Tax Act, 1964 includes a portion of building, so also the definition of 'Owner' as given in Sec.2(10), is with reference to land or building or portion thereof. Again the definition of 'occupier' as given in Sec.2(8) of the said Act is also with reference to land & building or portion thereof.

Further, there is no provision in the said Act for a consolidated assessment of a building separately owned & possessed by different owners and for apportionment of the tax so assessed so as to enable recovery from different co-owners. Hence the scheme of the Act, along with the definition referred above, all lead to the irresistible conclusion that a portion of a building owned and possessed separately by different persons is a different unit for the purpose of assessment under said Act.

CIRCULAR No.27/74

Sd/-
S.L. JOSHI
Director
Lands & Buildings Tax Deptt.,
Rajasthan, Jaipur."

9. It would be, thus, seen that the State Government itself looked in to the question whether different portions of a building occupied by different persons form different Units for the purpose of land and building tax or not? In the light of the definition of `building' given in Section 2(3) and also definition of `owner' and `occupier' provided

in Section 2 (8) and (10) respectively, the State Government was clear in its mind that a portion of the building owned and possessed by a different person is a different unit for the purpose of the Act of 1964 and all Assistant Directors of the Land and Building were informed accordingly. This circular clinches the issue and the view of the Rajathan Taxation Tribunal cannot be faulted.

10. Writ petition, accordingly, has no merit. It is dismissed with no order as to costs.

MAHESH CHANDRA SHARMA, J. R.M.LODHA,J.